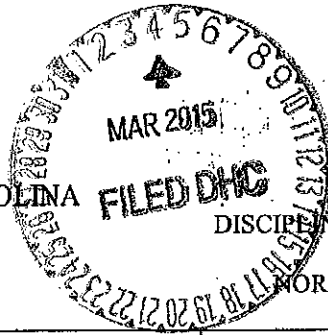


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
14 DHC 20

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PAUL T. JACKSON, Attorney,

Defendant

CONSENT ORDER OF  
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, and members Joshua W. Willey, Jr. and Bradley Lail, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Barry S. McNeill, Deputy Counsel. Defendant, Paul T. Jackson, was represented by Douglas J. Bocker and K. Brooke Ottesen of The Bocker Law Firm, P.A. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters the following:

**Findings of Fact**

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Paul T. Jackson ("Jackson" or "Defendant"), was admitted to the North Carolina State Bar on August 29, 1998, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Jackson was engaged in the practice of law in the State of North Carolina as an Assistant District Attorney in Prosecutorial District 11B in Smithfield, Johnston County, North Carolina.

4. On June 12, 2011, Elio Santos De La Cruz ("De La Cruz") was arrested on charges of felony possession of cocaine, felonious restraint, and second degree rape of a mentally disabled woman ("N S-C"), in *State v. De La Cruz*, Nos. 11 CRS 53550 and 53562 (Johnston County).

5. A rape kit collected from N S-C was sent to the North Carolina State Crime Laboratory ("Crime Lab") for DNA testing on or about June 17, 2011.

6. On July 11, 2011, a Johnston County Grand Jury returned true bills of indictment against De La Cruz charging him with the felonies referenced in Paragraph 4 above.

7. Pursuant to local rules for docket management, the court declared De La Cruz's case as "Exceptional," resulting in the case receiving specialized scheduling orders as deemed "appropriate and just" by the Senior Resident Superior Court Judge.

8. On July 14, 2011, De La Cruz's attorney filed a request for voluntary discovery pursuant to N.C. Gen. Stat. § 15A-903(a), and alternative motion for discovery seeking, among other things, the results of the DNA testing referenced in Paragraph 5 above, as well as any exculpatory evidence.

9. De La Cruz remained in pretrial confinement pending the felony charges referenced in Paragraphs 4 and 6 above.

10. Jackson was assigned to prosecute the charges against De La Cruz referenced in Paragraphs 4 and 6 above.

11. Jackson initially responded on July 26, 2011 to the request for voluntary discovery filed by De La Cruz's attorney and provided supplemental discovery responses to him on the following dates: August 24, September 2, September 7, and October 3, 2011 and on March 6, June 20, and August 3, 2012.

12. On February 28, 2012, Jackson forwarded a facsimile letter to the Crime Lab requesting that the DNA testing be expedited, noting that De La Cruz had been in custody since June 2011 and that "[t]he Court continues to question the State regarding the pending analysis because the results of the analysis are critical to the defendant's decision regarding whether or not to plead guilty."

13. De La Cruz's attorney filed motions to dismiss based on speedy trial grounds on May 8, 2012, October 30, 2012, and December 5, 2012.

14. In all three motions to dismiss, De La Cruz cited the Crime Lab's "unnecessary delay in processing the DNA from the 'Rape Kit'" as the cause for the delay of his trial.

15. At a November 9, 2012 hearing on De La Cruz's motion to dismiss, Jackson advised the court that he had sent the Crime Lab a letter requesting the DNA

analysis of the rape kit referenced in Paragraph 5 above be expedited, but that he was still awaiting the Crime Lab's report.

16. At a December 6, 2012 hearing in De La Cruz's case, the DNA issue was again raised and at the conclusion of the hearing, the following colloquy took place:

THE COURT: All right. Let's schedule it for January 7[, 2013]. We'll hear the defendant's speedy trial motion then. That will give you a few weeks to make some inquiry of the lab and see exactly where they are with the analysis. They may have it done.

MR. JACKSON: Should I subpoena somebody from the lab?

THE COURT: That's up to you.

17. Crime Lab communication logs show that in December of 2012, Jackson's assistant contacted the Crime Lab about the status of the test results in other pending criminal cases, but did not make inquiry about the status of the DNA testing in De La Cruz's case.

18. On January 8, 2013, Jackson also personally contacted the Crime Lab about the status of DNA testing in another pending criminal case, but did not make inquiry about the status of the DNA testing in De La Cruz's case.

19. On January 10, 2013, during a hearing on De La Cruz's motion to dismiss, the following colloquy took place regarding the status of the DNA report and De La Cruz's motion to dismiss:

THE COURT: How long has he been in custody now?

MR. WALKER: Five hundred eighty days.

THE COURT: When was the last time you talked to the lab?

MR. JACKSON: Probably after the last time we were on, last month.

THE COURT: Did they give you any idea?

MR. JACKSON: I'm hoping it will be soon. Right now, when you talk to the molecular genetic[s] section, they're saying we're retooling. They are substituting better equipment, more enhanced. I'm hoping soon. It seems like they should get it any day. I can't answer your question when it's going to be returned.

20. At the conclusion of the January 10, 2013 hearing, the Superior Court judge entered an order directing the Crime Lab to complete the DNA analysis in De La Cruz's case by February 4, 2013 or produce a representative at De La Cruz's

administrative setting in February 2013 to "explain to the Court why the analysis has yet to be completed."

21. Jackson had not made inquiry of the Crime Lab or its counsel about the status of the DNA analysis in De La Cruz's case prior to the January 10, 2013 hearing.

22. Neither Jackson's assistant nor anyone in his office had made inquiry of the Crime Lab or its counsel about the status of the DNA analysis in De La Cruz's case prior to the January 10, 2013 hearing.

23. Jackson's response to the court: "Right now, when you talk to the molecular genetic[s] section, they're saying we're retooling. They are substituting better equipment, more enhanced," referenced in Paragraph 19 above, was made in reference to his and his office's contacting the Crime Lab about other cases.

24. Jackson's response to the court, referenced in Paragraph 19 above, that he had "[p]robably" talked to the Crime Lab about De La Cruz's case after the December 2012 hearing was not accurate in that Jackson had not contacted the Crime Lab about the De La Cruz case or when the DNA report in the De La Cruz case would be forthcoming.

25. Jackson's statement to the court, referenced in Paragraph 19 above, in response to the court's question whether the Crime Lab had given any indication of when the DNA report in De La Cruz's case would be forthcoming, that "when you talk to the molecular genetic[s] section, they're saying we're retooling," was not accurate in that Jackson had not contacted the SBI Crime Lab about the De La Cruz case or when the DNA report in the De La Cruz case would be forthcoming.

26. Jackson had not made a reasonably diligent inquiry under the circumstances to confirm the accuracy of his statements in Paragraph 19 and created the misapprehension that he had contacted the Crime Lab about De La Cruz's case between the December 6, 2012 and January 10, 2013 hearings.

27. The presiding judge at the January 10, 2013 hearing referenced in Paragraph 19 above does not believe Jackson's statements were materially false or misleading.

28. On January 23, 2013, Jackson received information from the Crime Lab's counsel that the Crime Lab had completed the DNA analysis of the rape kit for N S-C on or about September 12, 2012, and had uploaded its report to its secure electronic information management system, the Case Object Repository, on or about that date.

29. Jackson's office had instituted a procedure to download and notify the assigned prosecutors of the reports available on the Crime Lab's Case Object Repository, referenced in Paragraph 28 above, but Jackson did not receive notice of the September 12, 2012 report concerning De La Cruz's case under his office's then-existing procedure.

30. The Crime Lab's September 12, 2012 DNA report excluded De La Cruz as the contributor of the sperm fraction from the vaginal swabs of N S-C.

31. On January 24, 2013, Jackson received a copy of the Crime Lab's DNA report in De La Cruz's case, referenced in Paragraph 28 above, and delivered a copy of the report to De La Cruz's attorney.

32. On that same date referenced in Paragraph 31 above, Jackson dismissed the rape and restraint charges against De La Cruz, citing the fact the sperm fraction from the vaginal swabs of N S-C did not match De La Cruz.

33. Jackson dismissed the cocaine possession charge against De La Cruz on January 28, 2013, citing the DNA finding and the fact De La Cruz had served more time awaiting trial than he could receive for conviction on the cocaine possession charge.

34. De La Cruz remained in custody under a deportation hold order by the United States Immigration and Customs Enforcement (ICE).

35. Given that Jackson could have timely inquired about or accessed the Crime Lab's September 12, 2012 DNA report exculpating De La Cruz, De La Cruz unnecessarily spent over four months in confinement awaiting trial on the criminal charges.

36. Due to Jackson's and his office's failure to make a reasonably diligent inquiry of the Crime Lab about the status of the DNA testing in De La Cruz's case, the court unnecessarily spent court time conducting hearings on De La Cruz's speedy trial motions and the status of the case.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

#### **Conclusions of Law**

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a) By failing to make reasonably diligent inquiry to learn of the availability of the Crime Lab's September 12, 2012 DNA report, and by failing to contact the Crime Lab between the December 6, 2012 hearing and the January 10, 2013 hearing to verify the status of the DNA analysis in De La Cruz's case, Defendant failed to act with reasonable diligence and promptness in representing the State of North Carolina in violation of Rule 1.3, failed to make a reasonably diligent effort to comply with a legally proper discovery request in violation of Rule 3.4(d)(2), failed to make a reasonably diligent inquiry for and timely disclosure of exculpatory evidence to De La Cruz's attorney in violation Rule 3.8(d), and, engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d); and,

- b) By making inaccurate statements of material fact to a tribunal without making a reasonably diligent inquiry to confirm the accuracy of his statements, thereby creating the misapprehension that he had contacted the Crime Lab about the De La Cruz case between the December 6, 2012 and January 10, 2013 hearings, Defendant engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

3. The alleged violations of Rule 3.3(a)(1) and Rule 8.4(c) are dismissed pursuant to this Consent Order.

Upon the consent of the parties, the Hearing Panel also enters the following:

#### **Findings of Fact Regarding Discipline**

1. Defendant has no prior disciplinary record concerning his license to practice law.
2. Defendant fully cooperated with the State Bar's investigation and has been responsive to the State Bar's inquiries.
3. Although Defendant's and his office's inaction resulted in De La Cruz unnecessarily spending over four months in confinement on the pending criminal charges, De La Cruz nevertheless would have remained in custody under a deportation hold order by ICE.
4. Defendant has expressed genuine remorse for his conduct.
5. Defendant did not engage in the conduct described in the Findings of Fact above with any dishonest or selfish motive.
6. Defendant has the reputation, among his peers and colleagues, of being honest and fair.
7. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

#### **Conclusions With Respect To Discipline**

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant consideration of suspension of Defendant's license:

- (B) Defendant committed acts or omissions where the harm or potential harm was foreseeable;

- (E) Defendant's actions potentially had a negative impact on the public's perception of the legal profession; and
- (F) Defendant's actions had negative impact on the administration of justice.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors exist warranting consideration of disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (A) Defendant's lack of prior disciplinary offenses;
- (C) Absence of a dishonest or selfish motive;
- (G) Defendant engaged in multiple offenses;
- (K) Defendant's full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- (P) Defendant's remorse;
- (Q) Defendant's good character and reputation; and
- (S) Defendant's degree of experience in the practice of law.

4. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the misconduct at issue and the harm or potential harm Defendant's misconduct caused to the public, the administration of justice, and the legal profession.

5. The Hearing Panel also has considered the disbarment factors under 27 N.C.A.C. 1B § .0114(w)(2), finds no such factors, and concludes that disbarment is not necessary to protect the public in this case.

6. The Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

- a) The factors under 27 N.C.A.C. 1B §.0114(w)(1) and (w)(3) that are established by the evidence are of a nature that support imposition of suspension as the appropriate discipline; and,
- b) Entry of less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message

to prosecutors, attorneys, and the public regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

#### **Order of Discipline**

1. Defendant, Paul T. Jackson, is hereby suspended from the practice of law for one year, effective 30 days from service of this order upon Defendant.
2. The one-year suspension is stayed for a period of two years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:
  - a) Defendant shall timely submit his annual Continuing Legal Education ("CLE") report form to the CLE Department of the North Carolina State Bar each year of the stay and contemporaneously send a copy of the CLE report form to the Office of Counsel of the State Bar to document compliance with the above conditions of the stay. "Timely" means by the date specified by the CLE department as the date by which members must submit their annual report forms to avoid assessment of a \$75.00 late filing penalty. Defendant must ensure the Office of Counsel receives a copy of his annual CLE report form no later than 15 days after it is due to the CLE department of the State Bar each year;
  - b) In addition to his annual requirement of 12 hours of CLE and within the next 12 months following the effective date of his suspension, Defendant shall complete an additional six (6) hours of CLE, approved in advance by the Office of Counsel, related to ethics and professionalism;
  - c) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all CLE requirements on a timely basis;
  - d) Defendant shall keep current his address of record with the North Carolina State Bar, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
  - e) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;
  - f) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
  - g) Defendant shall pay all costs and administrative fees of this proceeding as assessed by the Secretary within thirty (30) days after service of the notice of costs on him.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, the following conditions are placed upon Defendant's reinstatement to active status. With any petition Defendant files for reinstatement to active practice, Defendant must demonstrate by clear, cogent, and convincing evidence that he complied with each of the following conditions:

- a) Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- b) Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
- c) Timely completed the additional six (6) hours of CLE related to ethics and professionalism referenced in Paragraph 2(b) above;
- d) Not have violated any of the Rules of Professional Conduct;
- e) Not have violated any laws of the State of North Carolina or of the United States; and
- f) Paid all costs of this proceeding as assessed by the Secretary within thirty (30) days of service of the notice of costs upon him.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within thirty (30) days of service of the notice of costs upon Defendant.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed and/or activated suspension.

Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

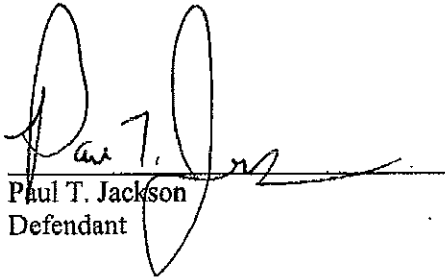
This the 3<sup>rd</sup> day of March 2015.



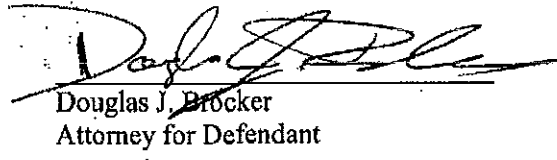
Steven D. Michael, Chair  
Disciplinary Hearing Panel

Agreed and consented to by:

  
Barry S. McNeill  
Attorney for Plaintiff



Paul T. Jackson  
Defendant



Douglas J. Bröcker  
Attorney for Defendant